

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Jon Wellinghoff.

Indicated Shippers

Docket No. RP04-99-002

v.

Tennessee Gas Pipeline Company

ORDER ON CLARIFICATION AND REHEARING

(Issued September 28, 2006)

1. Tennessee Gas Pipeline Company (Tennessee) and the Producer Coalition¹ request clarification, or in the alternative, rehearing of the Commission's order issued August 1, 2006 on a compliance filing by Tennessee concerning hydrocarbon dewpoint standards on its system.² For the reasons discussed below, the Commission grants the requests for clarification. The Commission denies the requests for rehearing as moot.

Background

2. The Commission issued an order on January 26, 2004³ in response to a complaint that Tennessee was setting new gas quality standards without revising its tariff under section 4 of the Natural Gas Act (NGA). The Commission found that Tennessee did not

¹ Consisting of Dominion Exploration and Production, Inc., Forest Oil Corporation, Hydro Gulf of Mexico, L.L.C., Kerr-McGee Oil & Gas Corporation, and Newfield Exploration Company.

² *Indicated Shippers v. Tennessee Gas Pipeline Company*, 116 FERC ¶ 61,113 (2006) (August 1 Order).

³ *Indicated Shippers v. Columbia Gulf Transmission Company and Indicated Shippers v. Tennessee Gas Pipeline*, 106 FERC ¶ 61,040 (2004).

violate its tariff when it posted notices setting gas quality standards consisting of maximum Btu and hydrocarbon dewpoint limits.⁴ The Commission did find, however, that Article II, sections 3(b) and 9 of Tennessee's tariff gave it too much discretion to vary gas quality standards for gas to be accepted into its system without processing and also contained no minimum notice period to shippers or provision of information justifying the limits. The Commission found these sections unjust and unreasonable under section 5 of the Natural Gas Act (NGA) and required Tennessee to file revised sections.

3. Tennessee made its compliance filing on March 5, 2004. However, at that time the Commission had begun to address gas quality issues at an industry-wide level. The Commission held Tennessee's compliance filing in abeyance until the completion of those efforts. On June 15, 2006, the Commission issued its *Policy Statement* on gas quality and interchangeability.⁵

4. In its August 1 Order, the Commission addressed Tennessee's compliance filing with the guidance provided by the *Policy Statement*. The Commission found that Tennessee had made its proposal well before the *Policy Statement* was issued and that neither Tennessee's compliance filing nor the parties' comments addressed all the requirements and concerns of the *Policy Statement*. Consequently, the Commission required Tennessee to update its compliance filing with actual tariff sheets in light of the *Policy Statement*.

5. First, the Commission stated that the *Policy Statement* emphasizes that gas quality standards should be based upon "sound technical, engineering and scientific considerations."⁶ Accordingly, the Commission stated Tennessee should include in its revised compliance filing all the technical, engineering and operational information upon which it relies to support each of its proposed gas quality standards.

6. Second, the Commission stated the *Policy Statement* states that jurisdictional tariffs should contain provisions that govern the quality of gas received for transportation⁷ when necessary to manage hydrocarbon liquid dropout within acceptable

⁴ The background of this proceeding is given in detail in the August 1 Order and will not be repeated here.

⁵ 115 FERC ¶ 61,325 (2006) (*Policy Statement*).

⁶ *Id.* at P 31.

⁷ *Id.*, at P 34.

levels. The Commission noted that the *Policy Statement* encouraged the use of interim guidelines adopted by the Natural Gas Council Plus (NGC+) ⁸ in formulating gas quality standards. The Commission noted that in its March 5 compliance filing, Tennessee proposed to use one of the methods in the *White Paper*, the cricondentherm hydrocarbon dewpoint (CHDP). ⁹ The Commission stated that if Tennessee proposed to use a different method in its updated filing, it must explain any differences between its updated proposal and the CHDP method.

7. Third, the Commission noted that the *Policy Statement* also requires a pipeline filing to revise its gas quality standards to include a comparison, in equivalent terms, of its proposed gas quality specifications ¹⁰ and those of each interconnecting pipeline. ¹¹ Accordingly, the Commission required that Tennessee include the required information in its revised compliance filing.

8. Fourth, the Commission stated the *Policy Statement* states that a pipeline's tariff should state the natural gas quality specifications for gas that the pipeline will deliver to its customers. ¹² The Commission noted there was no statement in Tennessee's proposal concerning existing or proposed gas quality specifications for gas that Tennessee delivers to its customers. Accordingly, the Commission stated Tennessee must explain or propose gas quality specifications for gas to be delivered to customers.

9. Last, the Commission stated that the *Policy Statement* addresses and encourages the use of blending, pairing, and similar strategies to combine rich gas supplies with lean gas supplies in order to accommodate more production when these actions can be undertaken on a non-discriminatory basis and in a manner that is consistent with safe and

⁸ *Liquid Hydrocarbon Drop Out in Natural Gas Infrastructure* (HDP Report or *White Paper*) (February 28, 2005).

⁹ In this order, the terms CHDP and HDP are used interchangeably.

¹⁰ The term gas quality specifications refers to provisions having to do with controlling liquid drop out.

¹¹ *Policy Statement*, 115 FERC at P 34.

¹² *Id.*, at P 35.

reliable operations.¹³ The Commission noted that, consistent with the *Policy Statement*, Tennessee had proposed a provision in Article II, section 3(b)(ii) that permitted accepting gas with a higher CHDP than the posted limit through aggregation or other reasonable means, to the extent operationally practicable. The Commission required Tennessee to propose specific tariff procedures for aggregation and blending in its revised proposal.

10. In its August 1 Order the Commission stated that it was allowing 60 days for Tennessee to make its revised compliance filing in order to provide an opportunity for Tennessee to discuss with interested parties the technical, engineering, and scientific considerations of its proposal and resolve as many issues as possible. The Commission took this step in accordance with the third *Policy Statement* principle that pipelines and their customers should develop gas quality and interchangeability specifications and with the *Policy Statement's* encouragement to pipelines and their customers to resolve these issues on their own.¹⁴ The August 1 Order provided for comments on Tennessee's revised compliance filing within twenty days of the date of the filing. It also directed staff to convene a technical conference to address the issues raised by Tennessee's revised compliance filing.

Procedural Matters

11. On August 29 and August 31, 2006, respectively, Tennessee and the Producer Coalition filed requests for clarification, or in the alternative, for rehearing. On September 8, 2006 National Fuel Gas Distribution Corporation (National Fuel) and East Ohio Gas Company, d/b/a Dominion East Ohio, and The Peoples Natural Gas Company d/b/a/ Dominion Peoples (Dominion LDCs) filed motions for leave to file answers and answers to the requests for clarification or, in the alternative, rehearing. On September 13, 2006, Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (Con Edison) replied to the clarification requests, sought leave to reply to the alternative rehearing requests, and replied to the rehearing requests. The Commission grants the motions to answer the requests for clarification and accepts the answers and replies to the clarification requests.

¹³ *Id.* at P 41. The *Policy Statement* states that "safe harbor" provisions and informational posting requirements are means of minimizing the potential for undue discrimination when a pipeline permits blending. *Id.* at P 77 citing *Natural Gas I* at P 43 and 48.

¹⁴ *Policy Statement*, 116 FERC, at P 31.

12. Several entities made late motions to intervene: the Hardeman Fayette Utility District, Henderson Utility Department, Holly Springs Utility Department, Town of Linden, Morehead Utility Plant Board, and Savannah Utilities (Tennessee Municipals) on August 25, 2006; Columbia Gas of Kentucky, Inc. (CKY), Columbia Gas of Ohio, Inc. (COH), and Columbia Gas of Pennsylvania, Inc. (CPA) (collectively NiSource Distribution Companies) on August 30, 2006; the Public Service Commission of the State of New York (PSCNY) on August 31, 2006; and the Public Service Company of North Carolina, Inc. (PSNC) on September 5, 2006. The Commission grants these late motions to intervene. The compliance filing in this proceeding is being revised to address the requirements and concerns of the Commission's *Policy Statement*. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties.

Requests For Clarification

13. Tennessee and the Producer Coalition ask the Commission to clarify the August 1 Order with respect to gas quality specification at delivery points. Paragraph 44 of the August 1 Order states:

Fourth, the *Policy Statement* states that a pipeline's tariff should state the natural gas quality specifications for gas that the pipeline will deliver to its customers.¹⁵ There is no statement in Tennessee's proposal concerning existing or proposed gas quality specifications for gas that Tennessee delivers to its customers. Accordingly, Tennessee must explain or propose gas quality specifications for gas to be delivered to customers.

14. Tennessee and the Producer Coalition ask the Commission to clarify that the intent of the August 1 Order in this paragraph is that Tennessee either propose specific HDP gas quality specifications for delivery points or provide an explanation as to why it is not proposing specific HDP gas quality specifications for delivery points. Tennessee describes its proposed explanation in a number of ways: (a) that delivery point gas quality specifications are not appropriately at issue in this proceeding; (b) that delivery point gas quality specifications are not appropriate for inclusion in Tennessee's proposed system-wide HDP Safe Harbor regime; and (c) that a delivery point HDP limit may or may not be appropriate in conjunction or consistent with an HDP Safe Harbor proposal.

15. Tennessee asserts that its March 5 compliance filing was only intended to address a proposed HDP safe harbor for gas received into its system and did not propose specific

¹⁵ *Id.*

gas delivery point specifications for HDP. It asserts further that none of the parties who filed comments on that filing requested that Tennessee establish a specific delivery point HDP gas quality specification, although it recognizes that certain parties emphasized Tennessee's obligation to deliver merchantable gas or the need to meet the requirements of downstream pipelines. Tennessee indicates that providing the clarification it seeks will affirm that the *Policy Statement* is not to be applied as an absolute to a specific proceeding, regardless of whether all aspects of the *Policy Statement* are in play, but is applied in the context of the issue raised in the underlying proceeding. Tennessee also asserts it is entitled to make an explanation because a policy statement is not binding precedent, citing *KN Wattenberg Transmission, LLC*, 94 FERC ¶ 61,173 (2001).

16. The Producer Coalition asserts that offering an explanation concerning delivery points is consistent with the *Policy Statement* which permits a pipeline to use a method other than the CHDP or C6+ to control gas quality as long as it explains how its method diverges from the CHDP method.¹⁶ The Producer Coalition states that one such approach for HDP limits at delivery points would be the inclusion of a general tariff quality specification on deliveries of gas to the effect that the gas delivered by the pipeline would be free of hydrocarbons in liquid form at the prevailing delivery temperature and pressure in the pipeline. It states that a similar provision is currently included in Tennessee's tariff and could be modified to address hydrocarbon liquids.¹⁷

17. If the Commission does not grant their requests for clarification and requires Tennessee to establish specific delivery point HDP gas quality specifications, then these parties ask for rehearing of the August 1 Order.

¹⁶ *Citing Policy Statement*, 115 FERC at P 34.

¹⁷ The Producer Coalition cites Article II, section 1(b) of Tennessee's General Terms and Conditions which, it states, provides in part:

The natural gas delivered by Transporter under this Tariff shall be commercially free (at prevailing pressure and temperature in Transporter's pipeline) from objectionable odors, dust, or other solid or liquid matters which might interfere with its merchantability or cause injury to or interference with proper operation of the lines, regulators, meters or other appliances through which it flows; and shall not contain more than twenty grains of total sulphur nor more than one grain of hydrogen sulphide per one hundred cubic feet.

Answers

18. National Fuel, the Dominion LDCs, and Con Edison assert that the requests for clarification, or in the alternative, rehearing, should be denied. They give the following reasons.

19. Con Edison asserts the clarification requests should be denied, first, because both the *Policy Statement* and the August 1 Order require Tennessee's tariff and its revised compliance filing to state the natural gas quality specifications for gas that the pipeline will deliver to its customers.¹⁸ Second, Con Edison states the August 1 Order is equally clear that the arguments raised by the clarification requests are premature. Con Edison asserts the August 1 Order recognized that gas quality and interchangeability issues are complex. Con Edison states that, as a result, the order required Commission Staff to convene a technical conference. It states that, similarly, the Commission gave Tennessee a full sixty days to file tariff sheets addressing the *Policy Statement's* concerns.

20. Con Edison states these procedures have been designed to permit all of the stakeholders to address both the *Policy Statement's* concerns and any difficulties Tennessee may see in addressing those concerns. Con Edison stresses that those procedures should not be short-circuited in the manner proposed by Tennessee and the Producer Coalition. It notes that in this regard the Producer Coalition now advocates a delivery point standard requiring "Tennessee to deliver gas that is free of hydrocarbons in liquid form at the prevailing temperature and pressure of delivery on the pipeline."¹⁹ Con Edison states that the potential to build on this common-sense proposal should not be lost by granting Tennessee the right to propose no delivery point standards and, in lieu thereof, to simply expand on its current position that no delivery point standards should be included in its tariff.

21. National Fuel states delivery point gas quality specifications are now and have been an appropriate issue in this proceeding. It asserts the Commission appropriately ordered Tennessee to file actual tariff sheets addressing natural gas quality specifications for gas Tennessee will deliver to its customers, based upon the *Policy Statement*. National Fuel states that to permit such a tariff filing to be optional would give Tennessee the ability to exempt itself from the filing obligation and avoid including an important gas quality issue in its tariff. National Fuel states that the Commission addressed delivery

¹⁸ Citing *Policy Statement* at P 35 and August 1 Order at P 44.

¹⁹ Citing Producer Coalition Request for Clarification, or, in the Alternative, Rehearing at pp. 8-9.

point gas quality in the *Policy Statement* and provided Tennessee 60 days to discuss delivery point gas quality issues, in accordance with the *Policy Statement*.

22. National Fuel states it has raised the issue of the quality of gas Tennessee will deliver in this proceeding and the need to maintain the merchantability of gas delivered to customers.²⁰ It also asserts that the *Policy Statement* provides for tariff provisions containing technical specifications for gas quality at delivery points and does not give a pipeline the option of ignoring important gas quality issues.²¹ It states that, as a result, the specific issues and facts before the Commission in this proceeding would not be adequately addressed if it is optional for Tennessee to file tariff sheets with natural gas quality specifications for gas that Tennessee will deliver to its customers. It asserts, in addition, that Tennessee should not be permitted to create an option to exempt itself from filing gas quality tariff sheets and escape compliance with the *Policy Statement*.

23. The Dominion LDCs state that they protested the March 5 compliance filing and argued that it is inappropriate to consider an HDP safe harbor to the exclusion of other gas quality standards such as heating value, and inappropriate to establish an HDP safe harbor without determining the effect of such a standard on the quality of gas being delivered to customers.²² The Dominion LDCs state that Tennessee's claim that no party filed comments requesting the establishment of delivery point specifications takes an unduly restrictive view of the comments. They state that the parties have not yet established a specific list of issues in this proceeding and that they have not waived their right to address gas quality standards at delivery points. Con Edison asserts that delivery point HDP limits are an issue in this proceeding because they are included in the *Policy Statement's* requirements and those requirements are central to establishing just and reasonable tariff provisions for gas quality on Tennessee's system.

24. The Dominion LDCs state that in the August 1 Order, the Commission advised Tennessee to discuss the technical, engineering, and scientific considerations of its

²⁰ National Fuel cites its Comments of March 25, 2006 in Docket No. RP04-99-001 at pp. 3 and 5. "In those comments it noted that "Tennessee's obligation to deliver merchantable gas to its customers should govern in the determination of gas quality standards imposed on gas received into its system." *Id.* at 3.

²¹ National Fuel cites *Policy Statement* at P 35 and 43.

²² *Citing Limited Protest to Compliance Filing of East Ohio Gas Company, d/b/a Dominion East Ohio, and The Peoples Natural Gas Company d/b/a/ Dominion Peoples at P 6-8 (March 25, 2004).*

revised proposal (which the Commission had required include delivery point gas quality specifications) with interested parties “in order to resolve as many issues as possible”²³ They state that Tennessee is attempting to resolve just one issue, the HDP Safe Harbor, and to defer indefinitely other issues that Tennessee itself has recognized are relevant.

25. National Fuel asserts that the Producer Coalition asserts both that Tennessee’s existing tariff language addresses gas quality at delivery points that could be tailored to address the issue of hydrocarbon liquids fallout and that Tennessee should have the option to explain why delivery point gas quality specifications are not appropriate for inclusion in Tennessee’s revised compliance tariff filing. National Fuel asserts these positions are contradictory and implies that the option to explain is not necessary since Tennessee could provide a tariff provision for delivery point gas quality specifications.

Discussion

26. The Commission grants the request for clarification that the August 1 Order did not require Tennessee to include in its compliance filing a tariff provision setting forth specific HDP gas quality specifications for the gas that it will deliver at its delivery points. In its revised compliance filing, Tennessee may, instead, provide an explanation concerning the appropriateness of gas quality specifications for gas to be delivered to its customers. The reasons for this decision are discussed below. At the same time, however, the Commission agrees with Con Edison and the Dominion LDCs that the parties may contest whatever position Tennessee takes in its filing, including raising issues concerning the effect of Tennessee’s proposal on the quality of the gas it delivers to customers. The Commission has encouraged all parties to resolve as many issues as possible concerning gas quality on pipeline systems. The Commission urges Tennessee to discuss gas quality specifications for gas to be delivered to its customers with those customers and to come to a resolution of those issues. For that reason, the Commission has decided to extend the filing date for Tennessee’s revised compliance filing.

27. The Commission is granting the clarification requests for the following reasons. In our January 2004 Order in this proceeding, we held pursuant to NGA section 5, that Article II, sections 3(b) and 9 of Tennessee’s existing tariff are unjust and unreasonable because they give Tennessee “too much discretion to vary the gas quality standards that must be satisfied if gas is to be accepted into its system without processing.”²⁴ We have

²³ August 1 Order at P 40.

²⁴ *Indicated Shippers*, 106 FERC, at P 39.

directed Tennessee to propose revised tariff provisions that would cure this problem, and the August 1, 2006 Order required Tennessee to update its compliance filing to address the concerns of the *Policy Statement*. However, the Commission has not yet made any merits determination as to how Tennessee must revise its tariff in order to remedy the fact the current tariff provision gives it too much discretion. Thus, Tennessee is free to propose any revised tariff provision that it believes is a just and reasonable replacement to the tariff provisions which the Commission has found to be unjust and unreasonable, and other parties may contest Tennessee's proposal and make their own proposals.

28. In addition, the Commission's *Policy Statement* concerning gas quality is a statement of policy, not a binding rule.²⁵ Tennessee may, if it wishes, seek to explain why it should not come within the *Policy Statement's* requirement that it state the natural gas quality specifications for gas that it delivers to its customers.²⁶ If Tennessee makes such arguments, the Commission will determine them on the merits. However, as stated above, other parties may contest whatever position Tennessee takes. In addition, the Commission urges the parties to discuss fully all of the relevant gas quality issues, including specifications at delivery points. The Commission believes that such discussion may lead to a resolution of these issues that would benefit all parties. The Commission heartily seeks such a resolution.

29. As the Commission is granting the requesting parties' requests for clarification, we deny their requests for rehearing as moot.

The Commission orders:

(A) The requests for clarification are granted as discussed in the body of this order.

²⁵ The *Policy Statement* is a statement of policy issued under the Administrative Procedure Act, 5 U.S.C. § 553(b)(A). A policy statement announces to the public the policy which the agency hopes to implement in future rulemakings or adjudications. *Panhandle Eastern Pipe Line Company v. FERC*, 198 F.3d 266, 269-270 (D.C. Cir. 1999) (*Panhandle*). A policy statement is not a substantive rule nor a precedent and it does not establish a binding norm or finally determine the issues or rights to which it is addressed. *Id. citing Pacific Gas & Electric Co. v. Federal Power Commission*, 506 F.2d 33, 38-39 (D.C. Cir. 1974).

²⁶ *Policy Statement* at P 35.

(B) The requests for rehearing are denied as moot.

(C) The filing date for Tennessee's revised compliance filing is extended 90 days from the date this order issues to allow the parties time to discuss the issues to resolve as many of the issues as possible.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Magalie R. Salas,
Secretary.